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Attorney for Plaintiff:  
**Our Clean Waters**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

OUR CLEAN WATERS, a California non-profit corporation

Plaintiff,

vs.

LMC ENTERPRISES dba Flo-Kem, Inc. a California corporation; DOES 1 through 10, inclusive,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND CIVIL PENALTIES IN AN AMOUNT NOT LESS  
THAN \$10,000,000.00**

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

Plaintiff OUR CLEAN WATERS (“Plaintiff” or “OCW”) a non-profit public benefit corporation, by and through its counsel hereby alleges:

**I. JURISDICTION AND VENUE**

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (“Clean Water Act” or “CWA”). This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505 1(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-2 (power to issue declaratory relief); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief); and 33 U.S.C. §§ 1319(d), 1365(a)(civil penalties).

2. On August 10, 2017, Plaintiff provided notice to LMC Enterprises dba FLO-

1 KEM, Inc. (“Defendant” or “FLO-KEM”) of its violations of the CWA, and of its intention  
2 to file suit against Defendant, to all necessary recipients pursuant to 33 U.S.C. §  
3 1365(b)(1)(A). A true and correct copy of the notice letter is attached as Exhibit A, and is  
4 incorporated.

5 3. More than sixty days have passed since notice was served on Defendant and all  
6 other necessary recipients. Plaintiff is informed and believes, and thereupon alleges, that nei-  
7 ther the EPA or the State of California has commenced or is diligently prosecution a court  
8 action to redress the violations alleged in the Complaint. This action’s claim for civil penal-  
9 ties is not barred by any prior administrative penalty under Section 309(g) of the Act, 33  
10 U.S.C. § 1319(g).

11 4. Venue is proper in the Central District of California pursuant to Section  
12 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the sources of violations are located  
13 within this judicial district.

## 14 II. INTRODUCTION

15 5. This Complaint seeks relief for discharges of storm water pollutants at FLO-  
16 KEM’s facility located at 19402 South Susana Road, Rancho Dominguez, CA, 90221 (“Facility”)  
17 in violation of the CWA and the National Pollutant Discharge Elimination System  
18 (“NPDES”) Order No. CAS000001, State Water Resources Control Board Water Quality Or-  
19 ders No. 2014-0057-DWQ (“Industrial General Permit”) and 92-12-DWQ (as amended by  
20 Order No. 97-03-DWQ (“Previous Industrial General Permit”).

21 6. Rainfall events cause millions of gallons of polluted water originating from in-  
22 dustrial operations to enter storm drains and local waterways. Water quality experts agree  
23 that storm water pollution is the cause of most of the pollution entering surface waters each  
24 year.

25 7. Los Angeles’ waterways are natural habitats for countless amounts of fish,  
26 bird, and invertebrate species. The waterways are a place for the community recreate and  
27 commune with nature. The Defendant’s continual discharge of contaminated storm water  
28 frustrates the aims of the CWA.



1 names, or capacities of DOES 1 through 10, inclusive (the “DOES”), whether individual,  
2 corporate, associate or otherwise, are presently unknown to Plaintiff. Plaintiff will amend  
3 this complaint to show their true names and capacities when the names have been ascer-  
4 tained.

5 16. FLO-KEM and the DOES are referred to collectively throughout this complaint  
6 as Defendant or Defendants.

7 **IV. STATUTORY BACKGROUND**

8 17. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any  
9 pollutant into the waters of the United States, unless the discharge is in compliance with var-  
10 ious enumerated sections of the CWA. Section 301(a) prohibits discharges not authorized  
11 by, or in violation of, the terms of an NPDES permit issued pursuant to Section 402 of the  
12 CWA, 33 U.S.C. § 1342.

13 18. Section 402(p) of the CWA establishes a framework for regulating municipal  
14 and industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p).  
15 States with approved NPDES permit programs are authorized by Section 402(p) to regulate  
16 storm water discharges through individual permits issued to specific dischargers, or through  
17 the issuance of a single, statewide general permit applicable to all industrial storm water dis-  
18 chargers. 33 U.S.C. § 1342(p).

19 19. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the  
20 U.S. EPA has authorized California’s State Water Resources Control Board (“State Board”)  
21 to issue NPDES permits, including general NPDES permits, in California. 33 U.S.C. §§  
22 1342(b), (d). The objective of the Act is to “restore and maintain the chemical, physical and  
23 biological integrity of the Nation’s waters.” 33 U.S.C. §§ 1251(a), 1311(b)(2)(A). There-  
24 fore, the act prohibits the discharge of a pollutant from any point source into waters of the  
25 United States except in compliance with other requirements of the Act, including Section  
26 402, which provides for NPDES permits. 33 U.S.C. §§ 1311(a), 1342(p). The Regional  
27 Board is responsible for issuance and enforcement of the General Permit in Region 4, which  
28 covers the Facility and the Receiving Waters.



1           20.     The State Board elected to issue a statewide General Permit for industrial storm  
2 water discharges. Between 1997 and June 30, 2015, the General Permit in effect was Order  
3 No. 97-03-DWQ ("1997 Permit"). On July 1, 2015, pursuant to Order No. 2014-0057-DWQ  
4 the General Permit was reissued (the "2015 Permit").

5           21.     In order to discharge storm waters lawfully in California, industrial dischargers  
6 must comply with the terms of the General Permit or have obtained and complied with an in-  
7 dividual NPDES permit. 33 U.S.C. §1311(a).

8           22.     The General Permit strictly prohibits certain kinds of discharges. Effluent Lim-  
9 itation Section B(3) of the 1997 Permit and V(A) of the 2015 Permit require dischargers to  
10 reduce or prevent pollutants in their storm water discharges through implementation of the  
11 Best Available Technology Economically Achievable ("BAT") for toxic and nonconvention-  
12 al pollutants, and the Best Conventional Pollutant Control Technology ("BCT") for conven-  
13 tional pollutants. BAT and BCT include both nonstructural and structural measures. Receiv-  
14 ing Water Limitation C(1) of the 1997 Permit prohibits storm water discharges and author-  
15 ized non-storm water discharges to surface water that adversely impact human health or the  
16 environment. The 2015 Permit includes the same Receiving Water Limitation. *See* 2015  
17 Permit, §VI.B. Discharges that contain pollutants in concentrations that exceed levels known  
18 to adversely impact aquatic species and the environment constitute violations of the Permit's  
19 Receiving Water Limitations. *See* 1997 Permit, §C(1); 2015 Permit, §VI.B. Receiving Wa-  
20 ter Limitation C(2) of the 1997 Permit prohibits storm water discharges and authorized non-  
21 storm water discharges that cause or contribute to an exceedance of an applicable Water  
22 Quality Standard ("WQS"). The 2015 Permit includes the same receiving water limitation.  
23 *See* 2015 Permit, §VI.A. Discharges that contain pollutants in excess of an applicable WQS  
24 violate these Receiving Water Limitations. *See* 1997 Permit, § C(2); *see also* 2015 Permit, §  
25 VI.A.

26           23.     In addition to absolute prohibitions, the General Permit contains a variety of  
27 substantive and procedural requirements that dischargers must meet. Both the 1997 Permit  
28 and the 2015 Permit generally require facility operators to: (1) submit a Notice of Intent

1 (“NOI”) describing the type of activity or activities undertaken at a facility and committing  
2 the operator to comply with the terms and conditions of the Permit; (2) eliminate unauthor-  
3 ized non-storm water discharges; (3) develop and implement a Storm Water Pollution Pre-  
4 vention Plan (“SWPPP”); (4) perform monitoring of storm water discharges and unauthor-  
5 ized non-storm water discharges; and (5) file an Annual Report summarizing the year’s in-  
6 dustrial activities and certifying compliance with the General Permit.

7       24. The SWPPP must describe storm water control facilities and measures that  
8 comply with the BAT and the BCT standards. The General Permit requires the initial  
9 SWPPP to have been developed and implemented before October 1, 1992. The SWPPP  
10 must, among other requirements, identify and evaluate sources of pollutants associated with  
11 industrial activities that may affect the quality of storm and non-storm water discharges from  
12 the facility and identify and implement site-specific best management practices (“BMPs”) to  
13 reduce or prevent pollutants associated with industrial activities in storm water and author-  
14 ized non-storm water discharges. *See* 1997 Permit, § A(2). Among other requirements, the  
15 SWPPP must include the following: identification and training of a pollution prevention  
16 team; a site map with detailed demarcations of potential pollutant sources; and a description  
17 of BMPs. Such must include both structural, and non-structural techniques. Section X(D)-  
18 X(I) of the 2015 Permit sets forth essentially the same SWPPP requirements, except that all  
19 dischargers are now required to develop and implement a set of minimum BMPs, as well as  
20 advanced BMPs as necessary to achieve BAT/BCT. *See* 2015 Permit, § X(H). The 2015  
21 Permit further requires certain SWPPP enhancements, including a comprehensive assessment  
22 of potential pollutant sources and more specific BMP descriptions. *See* 2015 Permit, §§  
23 X(G)(2), (4),(5).

24       25. The objectives of the requirement to develop, maintain and revise a SWPPP are  
25 to identify pollutant sources and develop BMPs that reduce or prevent polluted storm water  
26 from negatively affecting Receiving Waters and California communities. *See* 1997 Permit, §  
27 A(2); 2015 Permit, § X(C). BMPs must achieve compliance with the Permit’s Effluent Limi-  
28 tations and Receiving Water Limitations. To ensure compliance, the SWPPP must be evalu-

1 ated and revised as necessary. *See* 1997 Permit, §§ A(9)-(10); 2015 Permit, §X(B). Failure to  
2 develop or implement an adequate SWPPP, or revise an existing SWPPP as necessary, is an  
3 independent Permit Violation. *See* 2015 Permit, Fact Sheet § I(1).

4 26. Also, the 1997 Permit requires facility operators to develop and implement an  
5 adequate Monitoring and Reporting Program (“M&RP”) before industrial activities begin at  
6 the facility. *See* 1997 Permit, § B(1). The 2015 Permit contains substantially identical re-  
7 quirements. *See* 2015 Permit, § XI. The primary objective of the M&RP is to detect and  
8 measure the concentration of pollutants in a facility’s discharges to ensure compliance with  
9 the Permit’s Effluent Limitations and Receiving Water Limitations. An adequate M&RP  
10 must be reviewed and revised in response to analyses and observations to ensure that BMP’s  
11 are effectively reducing and/or eliminating pollutants from a facility’s activities from enter-  
12 ing the Receiving Waters. The Permit includes specific provisions requiring all covered fa-  
13 cilities to revise and improve BMPs when analytical results demonstrate an exceedance of a  
14 NAL. *See* 2015 Permit, § XII.

15 27. The 1997 Permit and 2015 Permit both contain the basic requirements, which  
16 include conducting visual observations of storm water discharges and authorized non-storm  
17 water discharges, collect and analyze samples of storm water discharges for relevant pollu-  
18 tants, revise and change the SWPP and/or facility operations as necessary in response to ana-  
19 lytical data, and file an Annual Report with the State Board. *See e.g.* 1997 Permit, §§ (B)3-  
20 (B)16.

21 28. The 1997 Permit required dischargers to collect storm water samples during the  
22 first hour of discharge from the first storm event of a wet season, and at least one other storm  
23 event during a reporting year. *See* 1997 Permit, § B(5). The 2015 Permit created a more de-  
24 manding schedule, and requires FLO-KEM to sample and analyze, no less than, four storm  
25 water discharges over the course of a reporting year. *See* 2015 Permit, § XI(B)(2). Under the  
26 1997 Permit, facilities must sample from qualifying storm events, which occur when there is  
27 a discharge of storm water during facility operating hours that was preceded by at least three  
28 working days without a storm water discharge. *See* 1997 Permit, § B(5)(b). The 2015 Permit

1 Broadens the definition of qualifying storm event by requiring only 48 hours without a storm  
2 water discharge from any drainage area. *See* Permit, § XI(B)(1)(b). A sample must be col-  
3 lected from each discharge point at the Facility, and if the operator fails to collect from each  
4 discharge point, the operator must still collect samples from two other storm events and ex-  
5 plain in the Annual Report why the first storm event was not sampled.

6 29. The General Permit requires all facilities to sample and analyze storm water  
7 discharges for the following parameters: pH, Total Suspended Solids (“TSS”), Specific Con-  
8 ductance (“SC”), and Total Organic Carbon (“TOC”) or Oil and Grease (“O&G”). *See* 1997  
9 Permit, § B(5)(c)(i); 2015 Permit, §§ XI(B)(6)(a)-(b). The Permit further requires dis-  
10 chargers to sample for parameters based on a facility’s standard industrial classification  
11 (“SIC”) code. *Id.* at Table D and Table 1 respectively. The Permit also requires the Facility  
12 to analyze each sample for toxic chemicals and other pollutants likely to be present in signifi-  
13 cant quantities or that are associated with industrial activities at the site. *See* 1997 Permit, §  
14 B(5)(c)(ii); 2015 Permit, § XI(B)(6)(c).

15 30. The Beneficial Uses of the Receiving Waters within the Affected Watershed  
16 where the Facility is located include commercial and sport fishing, estuarine habitat, fish mi-  
17 gration, navigation, preservation of rare and endangered species, water contact and non-  
18 contact recreation, shellfish harvesting, fish spawning, and wildlife habitat, as well as general  
19 recreational use by humans.

20 31. The Affected Watershed is impaired by, among other pollutants, chrysene,  
21 copper, aluminum, lead, sediment toxicity, mercury, and zinc.

22 32. Polluted discharges from the Facility cause and/or contribute to the degradation  
23 of the waters that OCW has made its mission to protect. Such pollution will undoubtedly  
24 have a negative effect beyond when it reaches other segments of Los Angeles’s vulnerable  
25 coast.

26 33. The EPA published “benchmark” levels as numeric thresholds to aid in deter-  
27 mining whether a facility discharging industrial storm water had implemented the requisite  
28 BAT and/or BCT as mandated by the CWA. *See* United States Environmental Protection



1 Agency NPDES Multi-Sector General Permit for Storm Water Discharges Associated with  
2 Industrial Activity, as modified effective May 9, 2009. EPA's benchmarks serve as objective  
3 measures for evaluating whether a permittee's BMP's achieve BAT/BCT standards as re-  
4 quired by Effluent Limitation B(3) of the 1997 Permit. Under the 2015 Permit, the State  
5 Board added Numeric Action Levels ("NALs") as part of the adaptive management approach  
6 implemented through the Permit. *See* 2015 Permit, § V(A). NALs are derived from EPA  
7 benchmarks, and function to trigger reporting requirements. *See* 2015 Permit, Fact Sheet §  
8 I(D)(5). While exceedances of the NALs demonstrate that a facility is among the worst per-  
9 forming facilities in the State, and has failed to implement pollution prevention measures re-  
10 quired by the Permit and the CWA, NALs do not represent technology based criteria relevant  
11 to determining whether a permittee has implemented BMPs that achieve BAT/BCT. Bench-  
12 marks and NALs represent pollutant concentrations at which a storm water discharge could  
13 impair, or contribute to impairing, water quality and or affect human health.

14 34. Sections 505(a)(1) and 505(f) of the CWA provide for citizen enforcement ac-  
15 tions against any "person," including individuals, corporations, or partnerships, for violations  
16 of NPDES permit requirements. 33 U.S.C. §§ 1365(a)(1) and (f), 1362(5). An action for in-  
17 junctive relief under the Act is authorized by 33 U.S.C. § 1365(a). Prior to November 2,  
18 2015, violators of the applicable CWA provisions are also subject to an assessment of civil  
19 penalties of up to \$37,500.00 per day. The CWA imposes civil penalty liability of up to  
20 \$51,570 per day of violation occurring after November 2, 2015, per violation for all viola-  
21 tions occurring after January 12, 2009, pursuant to Sections 309(d) and 505 of the CWA, 33  
22 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4.

## 23 24 V. STATEMENT OF FACTS

25 35. Upon information and belief, FLO-KEM' Facility was enrolled in the storm  
26 water permit program under Permit 91-13 since 1992. Facility submitted NOIs to the State  
27 Board for coverage under the 2015 Permit on June 17, 2015. The Waste Discharge Identifi-  
28 cation ("WDID") numbers for the Facility is 419I003939.

1           36. The Facility is approximately 70,000 square feet in size acres, almost entirely  
2 composed of impervious surfaces. The site is devoted to industrial activities used primarily  
3 for the production of cleaning and sanitizing products.

4           37. The SIC code for the Facility is 2842, designated for specialty cleaning, polish-  
5 ing and sanitary preparations. Upon information and belief, FLO-KEM engages in manufac-  
6 turing, loading, unloading, and storage of specialty cleaning and sanitizing products that  
7 is/are placed onto trailer chassis; truck, forklift, and chassis inspection, maintenance and re-  
8 pair, equipment storage, inspection, maintenance and repair; hydraulic jack usage; and vehi-  
9 cle traffic.

10           38. According to information and belief, activities at the Facility that are signifi-  
11 cant to storm water management include the usage of substances that are and or contain haz-  
12 ardous materials include diesel fuel, gasoline, lubricants, transmission fluid, antifreeze, used  
13 oil, paint, and related materials, organic cleaners and solvents. The storm water pollution  
14 originating from the Facility has been exacerbated by the unchecked spread of Zinc ("Zn")  
15 Nitrate & Nitrite ("N+N"), and Magnesium ("Mg"), and other pollutants.

16           39. Storm water from the Facility discharges, via the local storm sewer system  
17 and/or surface runoff indirectly into the Los Angeles River Reach 2, the Pacific Ocean, and  
18 the Affected Watershed.

19           40. On information and belief, Plaintiff alleges that the Facility's management  
20 practices do not prevent the sources of contamination described above from causing the dis-  
21 charge of pollutants to waters of the United States.

22           41. Since at least November 1, 2012, FLO-KEM has taken samples or arranged for  
23 samples to be taken of storm water discharges at the Facility. The sample reports were re-  
24 ported in the Facility's annual reports submitted to the Regional Board.

25           42. According to information available to OCW, including a review of both elec-  
26 tronic and hard copy files held by the Regional Board, the Facility has been in continuous vi-  
27 olation of the Permit's Effluent Limitations for the entirety of the relevant statute of limita-  
28 tions, particularly in relation to Zinc, N+N and Mg. levels.

1           43. The data available to OCW relevant to the Facility's violations of the Permit's  
2 Effluent Limitation, as reported by the Regional Board by FLO-KEM, are attached hereto.  
3 Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance  
4 of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9<sup>th</sup> Cir. 1988). A true  
5 and correct copy of the latest data reported to the Regional Board is attached as Exhibit B,  
6 and is incorporated. These results of storm water sample analysis demonstrate that FLO-  
7 KEM has not developed or implemented BMPs that achieve compliance with the CWA's  
8 BAT/BCT mandates, despite OCW's NOI.

9           44. The data indicates that discharges from the Facility contain concentrations of  
10 pollutants that cause or contribute to a violation of (1) California's Water Quality Control  
11 Plan; (2) the EPA's California Toxic Rule ("CTR"), *See* 40 C.F.R. § 131.38; and (3) the  
12 CWA. Both the Water Quality Control Plan and the CTR set the numeric limit for Zn of .26  
13 milligram per liter (mg/L), which is identical to the level set in the EPA's benchmark for the  
14 1997 Permit and the applicable NAL in the 2015 Permit. Discharges from the Facility in ex-  
15 cess of the numeric water quality standards set in these WQS's constitute individual viola-  
16 tions of Receiving Water Limitations. Therefore, in addition to a violation of the Permit's  
17 Effluent Limitation, any and all exceedances of a .26 mg/L limit for Zn is a separate and dis-  
18 tinct violation of the Permit's Receiving Water Limitations.

19           45. The NAL for N+N is .68 mg/L. On various occasions over the past five years,  
20 discharges have exceeded the NAL for N+N. These exceedances constitute violations of the  
21 Permit's Receiving Water Limitations.

22           46. The NAL for Mg is .064 mg/L. On at least one occasion in the past five years,  
23 a discharge of Mg exceeded the NAL for Mg. This, and any other such exceedances, consti-  
24 tute violations of the Permits' Receiving Water Limitations.

25           47. Discharges of elevated concentrations of pollutants in the Facility's storm wa-  
26 ter can adversely impact human health. The Facility discharges storm water that contains  
27 chemicals, including Zinc, N+N and Mg which can be acutely toxic and/or have sub-lethal  
28 impacts on humans, wildlife and can adversely affect overall ecosystem health.



1        54. It is a violation of the Permit's Effluent Limitations each and every time storm  
2 water containing levels of pollutants that do not achieve BAT/BCT standards discharges  
3 from the Facility.

4        55. Each and every violation of the Storm Water Permit Effluent Limitations in a  
5 separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

6        56. The violations of the Permit's Effluent Limitations and the Act are ongoing and  
7 continuous.

8        57. By committing the acts and omissions alleged above, the Owner and/or Opera-  
9 tor is subject to an assessment of civil penalties for each and every violation of the CWA oc-  
10 ccurring from November 1, 2012 to present, pursuant to sections 309(d) and 505 of the CWA,  
11 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

12        58. An action for injunctive relief is authorized by Section 505(a) of the Act, 33  
13 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would  
14 irreparably harm Plaintiff and the citizens of the State of California, for which harm OCW  
15 has no plain, speedy, or adequate remedy at law.

16        59. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
17 an actual controversy exists as to the rights and other legal relations of the Parties.

18  
19        WHEREFORE, Plaintiff prays for judgment against Defendant as set forth hereafter.

20  
21                    **SECOND CAUSE OF ACTION**

22                    **Discharges of Contaminated Storm Water**  
23                    **in Violation of Permit Receiving Water Limitations and the Act**

24        60. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully  
25 set forth herein.

26        61. Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water dis-  
27 charges and authorized non-storm water discharges to surface water that adversely impact  
28 human health or the environment. The 2015 Permit includes the same Receiving Water Lim-  
itation. *See* 2015 Permit, § VI.B. Discharges that contain pollutants in concentrations ex-



ceeding levels known to adversely impact aquatic species and the environment constitute violations of these Receiving Water Limitations. *Id.* at § VI.A.

62. Plaintiff is informed and believes, and thereupon alleges, that since at least November 1, 2012, Defendant has discharged polluted storm water from the Facility causing or contributing to the violation of California's Water Quality Control Plan and/or the Basin Plan, and that adversely impacts human health or the environment in violation of the Permit's Receiving Water Limitation.

63. It is a violation of the Storm Water Permit Effluent Limitations and each and every time storm water containing levels of pollutants that do not achieve BAT/BCT standards discharge from the Facility. Each violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These violations are ongoing and continuous.

64. By committing the acts and omissions alleged above, the Owner and/or Operator are subject to an assessment of civil Penalties for each and every violation of the Act occurring from November 1, 2012 to the present, pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

65. An action for injunctive relief is authorized by the Act's section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm OCW has no plain, speedy, or adequate remedy at law.

66. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

WHEREFORE, Plaintiff prays for judgment against Defendant as set forth hereafter.

**THIRD CAUSE OF ACTION**

**Failure to Develop and Implement an  
Adequate Monitoring and Reporting Program  
(Violation of Permit Conditions and the CWA, 33 U.S.C. §§ 1311, 1342)**

68. Defendant has not developed and implemented an adequate Monitoring and Reporting Program ("M&RP") for the Facility.

69. Each day since November 1, 2012 that the Facility did not develop or implement an adequate M&RP for the Facility in violation of the General Permit is a separate and distinct violation to the General Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a). The absence of requisite monitoring and analytical results are ongoing and continuous.

70. By committing the acts and omissions alleged above, the Owner and/or Operator is subject to an assessment of civil penalties for each and every violation of the CWA occurring from November 1, 2012 to the present, pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

71. An action for injunctive relief is authorized by Section 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm OCW has no plain, speedy, or adequate remedy at law.

72. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

WHEREFORE, Plaintiff prays for judgment against Defendant as set forth hereafter.

WHEREFORE, Plaintiff prays for judgment against Defendant as set forth hereafter.

#### FOURTH CAUSE OF ACTION

**Failure to Prepare, Implement, Review, and Update  
An Adequate Storm Water Pollution Prevention Plan (SWPPP)  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

73. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if full set forth herein.

74. Defendant has not developed and implemented an adequate SWPPP for the Facility.

1       75. Each day since at least November 1, 2012, that Defendant has not developed,  
2 implemented, and updated an adequate SWPPP for the Facility is a separate and distinct vio-  
3 lation of the General Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

4       76. By committing the act and omissions alleged above, the Owner and/or Operator  
5 is subject to an assessment of civil penalties for each and every violation of the CWA occur-  
6 ring from November 1, 2012 to the present, pursuant to sections 309(d) and 505 of the CWA,  
7 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4

8       77. An action for injunctive relief is authorized by Section 505(a) of the CWA, 33  
9 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would  
10 irreparably harm Plaintiff and the citizens of the State of California, for which harm OCW  
11 has no plain, speedy, or adequate remedy at law.

12       78. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
13 an actual controversy exists as to the rights and other legal relations of the Parties.

14  
15       WHEREFORE, Plaintiff prays for judgment against Defendant as set forth hereafter.

16  
17                                   **PRAYER FOR RELIEF**

18       Wherefore, Plaintiff respectfully requests that this Court grant the following relief:  
19

20               1. Declare Defendant(s) to have violated and to be in violation of the CWA  
21 as alleged herein;

22               2. Enjoin Defendant(s) from discharging polluted storm water from the Fa-  
23 cility unless authorized by the Permit;

24               3. Enjoin Defendant(s) from further violating the substantive and proce-  
25 dural requirements of the Permit;

26               4. Order Defendant(s) to immediately implement storm water pollution  
27 control and treatment technologies, and measures that are equivalent to BAT or BCT  
28 and prevent pollutants in the Facility's storm water from contributing to violations of

1 any water quality standards;

2 5. Order Defendant(s) to comply with the Permit's monitoring and report-  
3 ing requirements, including ordering supplemental monitoring to compensate for past  
4 monitoring violations;

5 6. Order Defendant(s) to prepare a SWPPP consistent with the Permit's re-  
6 quirements and implement procedures to regularly review and update the SWPPP;

7 7. Order Defendant(s) to provide Plaintiff with reports documenting the  
8 quality and quantity of their discharges to waters of the United States and their efforts  
9 to comply with the CWA and the Court's orders;

10 8. Order Defendant(s) to pay civil penalties of \$37,500 per day per viola-  
11 tion for all violations pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§  
12 1319(d), 1365(a) and 40 C.F.R. §§ 19.1-19.4 before November 2, 2015; The CWA  
13 imposes civil penalty liability of up to \$51,570 per day of violation occurring after  
14 November 2, 2015;

15 9. Order Defendant(s) to make appropriate actions to restore the quality of  
16 waters impaired or adversely affected by their activities;

17 10. Award Plaintiff's costs (including reasonable investigative, attorney,  
18 witness, compliance oversight, and consultant fees) as authorized by the CWA, 33  
19 U.S.C. § 1365(d); and,

20 11. Award any such other and further relief, as the Court may deem appro-  
21 priate.

22 Respectfully submitted,

23  
24 **LEVITT LAW, APC**

25 Date: November 5, 2017

26 By: Scott L. Levitt

27 Scott L. Levitt  
28 Attorneys for Plaintiff